IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 385 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HAIDER AYUB MIYANA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR CHIRAG M PAWAR for Appellant(s) : 1, Appointed by Legal Aid
MR. R.C.KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29th, 31st August 2007 & 6th September 2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this Appeal filed under Section 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 1.3.1999 rendered in Special Sessions Case No. 124 of 1995 by the learned Special Judge (Atrocity) and Additional Sessions Judge, Ahmedabad Rural, by which the sole Appellant ("the Accused" for short) has been convicted for commission of the offences punishable under Sections 302, 307, 201, 354 of the Indian Penal Code ("IPC" for short) and also under Sections 138, 156 and 162 of the Indian Railways Act ("the Act" for short), and sentenced to imprisonment of life and fine of Rs.1000/- in default of payment of fine SI for 3 months for the offence punishable under Section 302 IPC, RI for 2 years and fine of Rs.500/- in default of payment of fine SI for 45 days for the offence punishable under Section 201 IPC, RI for 2 years and fine of Rs.1000/- in default of payment of fine SI for 3 months for the offence punishable under Section 354 IPC. No separate sentence for the offences punishable under Section 307 IPC and under the Act has been imposed upon the accused. It is also ordered that all the substantive sentences shall run concurrently.

2. The prosecution case as disclosed from the vardhy given by PW-20 Gulabsinh Devusinh, Head

Constable as well as on the basis of the statement of PW-13 Hansaben Arjanbhai Parmar, and unfolded during trial is as under:

2.1 PW-20 Gulabsinh Devusinh, Head Constable, serving at Gandhidham Railway Station had given a Vardhi that, on 24/25-7-1995, he was assigned duty of patrolling in Kachchh Express from Gandhidham to Vadodara. At about 3 O' Clock in the night, the train stopped because of chain pulling. He, therefore, along with another Police Constable had gone at the back and found that, somewhere between Viramgam and Anand, in the ladies compartment of the said train, an unknown person had inflicted knife blows on the stomach and chest of a lady named Samuben Kalyanbhai Solanki, resident of Udhna, Surat and caused injuries. She had been sent to Ahmedabad Civil Hospital for treatment as her condition was serious. The bogie in which the offence took place had been detached and kept separately in the Ahmedabad Railway Station. The injured lady was accompanied by her daughter Hansaben Arjanbhai Parmar, wife of Arjunbhai, resident of Dhangadhra. The said vardhy was conveyed to PW-18 Maleksab Husainmiya Tank, PSI, who immediately rushed to the Ahmedabad Railway Station.

2.2 Pursuant to the vardhy which is registered vide CR No. I 46/95 with Viramgam Railway Police Station, as well as the statement

of Hansaben, investigation was put into motion and entrusted to PW-18 Maleksab Husainmiyan Tank, PSI, who had drawn the panchnama of the compartment, prepared inspection of the compartment in presence of FSL officers, held inquest on the dead body of the deceased Samuben Kalyanbhai Harijan, sent the dead body for autopsy, recorded further statement of Hansaben and other witnesses, drawn the panchnama of the clothes of the deceased, and collected the blood samples from the dead body of the deceased, sent all the mudamal to FSL for analysis and thereafter entrusted the further investigation to PW-19 Naransinh Mansinh Barad, PI. After taking over charge of the investigation by Naransinh Mansinh Barad, PI, a panchnama of the physical condition of the Accused was drawn and the clothes which he had put on at the time of incident were seized in the presence of the panchas and the panchnama was drawn accordingly. Thereafter the Accused was sent for medical treatment. He has also drawn discovery panchnama. He has also produced the Accused in the Court and also obtained remand. As it was necessary to hold the test identification parade of the Accused, a yadi was sent to the Executive Magistrate and he had asked them to bring the eye witness before him on the next day. On 29.7.1995, Hansaben was produced for the purpose of TI parade and produced before the Executive Magistrate. TI parade was accordingly held by

him. Thereafter again investigation was handed over to PW-18 Maleksab Husainmiya Tank.

2.3 On receipt of the autopsy report as well as report of FSL, as sufficient incriminating evidence was found against the Accused for commission of the offence of murder of Samuben under Section 302 IPC, he filed charge sheet in the Court of learned Special Judge (Atrocity), Ahmedabad Rural.

2.4 The learned Special Judge, Atrocity Court and Additional Sessions Judge, to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Section 3(I)(XI) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 ("Atrocity Act" for short), under Sections 302, 307, 201, 354 IPC and under Sections 138, 156 and 162 of the Act.

2.5 The charges were read over and explained to the Accused. The Accused pleaded not guilty to the charges and claimed to be tried, and therefore, he was put to trial by the learned Special Judge (Atrocity) and Additional Sessions Judge, Ahmedabad Rural in Sessions Case No. 124 of 1995.

2.6 In order to prove the charges levelled against the Accused, the prosecution has examined in all 19 witnesses and relied upon

their oral testimony, details of which have been given in paragraph 7 of the impugned judgment. They are as under:

PW No.	Name	Exh.
1	Babubhai Harjivanbhai	21
2	Bhikhabhai Chaganbhai	23
3	Babubhai Ranchodbhai	24
4	Javerji Kalaji	26
5	Becharbhai Gagabhai	28
6	Shaileshbhai Shankarlal Parmar	32
7	Natubhai Somabhai Patel	35
8	Sirajbhai Bachubhai Kureshi	36
9	Hareshkumar Himatlal Vasava	37
10	Himatbhai Karsanbhai	39
11	Harishchandra Pritamdas	40
12	Girishbhai Jamnadas Parikh,Medical Officer, Viramgam.	42
13	Hansaben Arjanbhai Parmar, Eye witness.	45
14	Rajendrabhai Dahyalal, Guard	52
15	Gulamhusain Daudbhai, Executive Magistrate	54
16	Bachubhai Amarsinhbhai, Panch – TI Parade.	57
17	Vinayakrao Vasudevrao Patil, Doctor who has performed PM.	59
18	Maleksab Husainmiyan Tank, IO	61
19	Naransinh Mansinh Barad, IO.	65
20	Gulabsinh Devusinh, Head Constable – Complainant.	68
21	Nileshbhai Prabhudas, Photographer.	74

2.7 To prove the culpability of the Accused, the prosecution has also produced number of documents and relied upon the contents of the same, the details of which have been given in paragraph 6 of the impugned judgment and the same will be discussed hereinafter in detail in this judgment as and when required.

2.8 After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the Accused, circumstances appearing against him and recorded his further statement under Section 313 of the Code. In his further statement, the Accused denied the case of the prosecution in its entirety. He has stated that a false case has been filed against him. However, he has neither led any evidence nor examined any witness in support of his defence.

2.9 On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court came to the conclusion that the prosecution has successfully established that the Accused boarded the ladies compartment of Kachchh Express, where deceased Samuben and her daughter Hansaben were traveling, and tried to outrage the modesty of Hansaben and when it was protested by the deceased Samuben, the Accused inflicted knife blows on her abdomen and thereafter the Accused alighted from the running train. This is proved from the evidence of

Hansaben, who happens to be the eye witness of the incident. She had also identified the Accused in TI parade as well as in the Court. Besides this, the prosecution, on the basis of the circumstantial evidence had also proved that there was blood stain on the clothes of the Accused having the same blood group as that of the deceased, i.e. blood group 'A' and the Accused had also received injuries during scuffle. Therefore, the prosecution has established the case beyond reasonable doubt against the Accused for commission of the offence of murder of Samuben under Section 302 IPC and the complicity of the Accused is established in commission of the said offence with which he was charged. On the aforesaid finding, the trial Court held that the complicity of the Accused for committing murder of Samuben is wholly established, and therefore, recorded the order of conviction and imposed various sentences to which reference is made in earlier paragraph of this judgment, which has given rise to the instant Appeal at the instance of the Accused.

3. In support of the Appeal, Mr. Chirag M. Pawar, learned advocate of the Accused, appointed by legal aid, has contended that the prosecution has miserably failed to prove the guilt of the Accused beyond reasonable doubt. The so called evidence of eye witness PW-13 Hansaben Arjanbhai Parmar bristles with a lot of contradictions

with regard to the fact that she has seen the Accused in the train as well as identified the Accused in TI parade. The TI parade is held in perfunctory manner and it was an empty formality. It is also emphasized by him that TI parade is not held as per the rules and regulations under the Bombay Police Manual, therefore no reliance can be placed on the so called eye witness PW-13 Hansaben as well as the evidence of TI parade. It is also pointed out by him that so far as the blood stains on the clothes of the deceased is concerned, it was having blood group 'A' and the Accused is also having 'A' blood group. The accused has also received injuries on his thigh. Therefore, merely on the basis of the said evidence, he cannot be connected with the alleged crime of murdering Samuben. The Mamlatdar has not taken care to select the dummies falling within the same age group as well as similar physiques and therefore TI parade loses its evidential value. He, therefore, submitted that the impugned judgment and order is against the evidence on record and the trial Court has misdirected itself in reading the evidence of the prosecution witnesses and hence the impugned judgment and order convicting and sentencing the Accused for commission of the offences punishable under Sections 302, 307, 201 IPC as well as under the Act, deserves to be quashed ans set and aside by giving benefit of doubt and

thereby acquitting the Accused of the offences with which he was charged. He, therefore, urged to allow the Appeal.

4. Per contra, Mr. R.C.Kodekar, learned APP for the Respondent – State of Gujarat has vehemently submitted that the trial Court has recorded a categorical finding about the guilt of the Accused and the complicity of the Accused is duly established by the prosecution on the basis of the evidence of PW-13 Hansaben Arjanbhai Parmar, who is the eye witness to the incident. She has also identified the Accused in TI parade in the presence of the panchas. The evidence of PW-15 – Gulamhusain Daudbhai, Executive Magistrate at exh. 54 is also consistent who has taken all precautions which should have been taken in TI parade. It is also proved by the circumstantial evidence of the clothes of the deceased by way of discovery panchnama which is stained with blood group 'A', which is similar to the blood group of the deceased. Therefore, there is no room of doubt in the prosecution case and the trial Court has rightly recorded the finding with regard to the guilt of the Accused. According to him since the complicity of the Accused for commission of murder of Samuben is established by the prosecution beyond reasonable doubt, the impugned judgment and order convicting and sentencing the Accused for commission of the offence of murder of Samuben does not call for interference of this Court in

this Appeal. He, therefore, urged to dismiss the Appeal.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the Accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. To prove the fact that the deceased Samuben died a homicidal death, the prosecution has examined PW-17 – Dr. Vinayakrao Vasudevrao Patil at exh. 59, who has conducted the postmortem on the dead body of the deceased Samuben. He has testified that on 25.7.1995 when he was on duty in Civil Hospital, Ahmedabad, at 10:35 pm, the dead body of Samuben was brought by the PSI, Viramgam Police Station for performing autopsy. During the examination of the dead body, he found in all 5 external injuries, which he has noted in column no. 17 of the autopsy report. The said

report is on record at exh. 60. In column no.17 of the PM report, the following injuries have been noted:

(i) An oblique stab would is present in 7th Rt. Intercostal space of chest. Size cavity deep – 3x1 cm. It is 7 cm away from the midline.

(ii) One oblique stab wound is present on front of abdomen 4.5 cm below lower end of sternum of size 3.5cm x 1cm cavity deep.

(iii) Another oblique stab wound is present 3cms below ext. inj. no. (2). Size 2.5cm x 1cm muscle deep.

(iv) An oblique incised would is present on Rt. outer side of abdomen in middle part. Size 4.5 x 1.5cm.

(v) A horizontal incised wound is present 5cm left to umbilicus. Size 4 x 1.5 cm.

So far as cause of death of Samuben is concerned, it is mentioned that the same is because of haemorrhage and shock due to stab injuries sustained over the abdomen.

A perusal of the oral testimony of PW-17 Dr. Vinayakrao Vasudevrao Patil at exh. 59 and PM Report exh. 60, there is no manner of doubt that the deceased died a homicidal death. The trial Court has also recorded the categorical finding that the deceased died a homicidal death. We, therefore, affirm the said finding.

7. Having held that the deceased died a homicidal death, the next question that requires consideration of this Court is as to whether the Accused was the assailant and the author of the injuries caused to the deceased Samuben.

8. In order to establish the guilt of the Accused, the prosecution has mainly relied upon the evidence of PW-13 Hansaben Arjanbhai Parmar, who happens to be eyewitness of the incident as she was in the company of the deceased Samuben in the ladies compartment of the carriage of Kachchh Express, and has also identified the Accused in TI parade as well as the evidence of PW-15 Gulam Husain Daudbhai at exh. 54, who is the Executive Magistrate and has held the TI parade.

9. In this connection, we shall first advert to the deposition of PW-10 Himatbhai Karshanbhai at exh. 39. He is the nephew of the husband of the deceased Samuben, who accompanied the deceased and Hansaben up to railway station. He has inter alia stated that his grandmother Sumanben resides at Udhna in Surat and her daughter Hansaben was his maternal aunt. The in-laws of Hansaben reside at Vavdi village near Dhangadhra village at a distance of 4 to 5 kms from his residence. He has further deposed that at about 8 O'clock, in the evening, his grandmother, his aunt Hansaben and her husband had come to his house. After they had taken their dinner, he had gone to leave them at the bus stand for

going to Surat. But the bus had already left, and therefore, they all went to railway station. As his grandmother and aunt had to go to Surat, they had purchased the tickets for the train which departed at 12 O'clock at night. When the train arrived, they boarded the ladies' compartment near the guard. There was no other lady passenger in the compartment. After the train left, he and his uncle had returned home. As no train was available, his uncle had stayed with him at night. This witness had further deposed that in the morning, at 11 O'clock, they had received the news that his grandmother had been murdered in the train, and that a knife had been used to commit the said murder.

It may be noted that this witness was not at all cross-examined by the leaned advocate of the Accused. On reappraisal of the evidence of this witness, it is duly established that when Hansaben and the deceased boarded the ladies compartment of Kuchchh Express, there was nobody except Hansaben and deceased Samuben.

10. The prosecution has thereafter examined and relied upon the evidence of PW-11 Harishchandra Pritamdas at exh. 40. He has inter alia stated that; at the relevant time, he was Station Master at Viramgam Railway Station. The train reached Viramgam Railway Station at 1:58 hours and stopped up to 2 O' Clock. He received message from Station Master, Jakhwada Railway Station at about 3:50 hours about the assault made to a lady by knife by unknown person. He

sent the message to Viramgam Railway Police Station which is on record at exh. 41. This witness was also not cross-examined by the learned advocate of the Accused.

11. The prosecution has thereafter examined and relied upon the evidence of PW-13 – Hansaben Arjanbhai Parmar at exh. 45, who is the prime and star eyewitness of the incident. She has inter alia testified that she is a resident of Vavdi village, which is the place of her in-laws. She has studied upto 4th or 5th standard and belongs to Harijan caste. Her parents reside at Surat and her husband's name is Arjanbhai. The incident had taken place after five months of her marriage. At the relevant time, she was residing at her in-law's place and after her wedding, on the occasion of first festival of Shravan month, as per their custom, she would be called at her parent's place. At the relevant time, her mother Samuben had come from Surat to take her. Her mother stayed with them for 2-3 days and thereafter, she had decided to go to Surat. In order to go to Surat from Vavdi village, one has to first go to Dhangadhra and from Dhangadhra, he can go to Surat by S.T. Bus or by train. She has further deposed that on the day of the incident, she along with her mother had left Vavdi village and reached Dhangadhra at about 5 O'clock. Thereafter, they had gone to her brother in-law – Karsanbhai Jamnadas's place and after having dinner, they had set out to go to Surat.

Initially, they had gone to the bus depot, at Dhangadhra, but they could not get the bus, therefore, they had gone to the railway station, at about 10 O'clock in the night. The train was scheduled to depart at 12 p.m. As soon as the train arrived, her husband purchased the tickets for them, and the guard at the railway station advised them to sit in the ladies' compartment. The guard also told them that other ladies would be coming, therefore, they had taken their seats in the ladies' compartment and the train had departed. In the train they were afraid, as she and her mother were alone in the said ladies compartment. They thought that they would change the compartment as and when the Viramgam station comes. In Viramgam Railway station, they tried to change the compartment, but they could not do so, because the train started immediately. Little while after the train left Viramgam Railway Station, a ruffian boarded the said ladies compartment, and all of a sudden, came and sat on the seat in front of them. Thereafter, he roamed around once or twice in the compartment and suddenly came and sat beside them. He was wielding an open knife in his hands and told her mother to leave and asked her to lie down. Her mother told the ruffian that it is a ladies' compartment and asked him to get down. The ruffian thereafter caught hold of her mother's hand. Her mother intervened and the ruffian pushed her. Thereafter, he had inflicted 4 to 5 blows on her mother's abdomen, after which, her mother had tried to stop the

train by chain pulling, however, she could not pull the chain, whereupon she had pulled the chain and the train stopped and she started shouting. Thereafter, the said person got down from the running train and she saw that her mother had sustained knife injuries. Upon hearing her shouts, the guard and two police personnel had come there. Thereafter, she informed the police regarding the said incident, after which her mother was made to lie down in the same compartment and she had changed her clothes. Thereafter, the train reached Ahmedabad, and her mother was admitted to the Civil Hospital, where the doctor declared her dead. This witness has stated that she can identify the ruffian who had inflicted knife blows on her mother. She has identified the accused in the court and has described the knife used by him for inflicting the said blows. This witness has further deposed that the main reason for inflicting the knife blows on her mother was to outrage her modesty. She has further deposed that the bloodstained clothes of her mother had been produced before the police. This witness has further deposed that, after the accused was arrested, she had been called by the police to the office of the Mamlatdar, at Viramgam for identifying the accused. At the relevant time, ten persons were made to stand in a row and she had identified the accused out of them. This witness has also identified the knife (muddamal article No.26) in the Court as the weapon used by the accused for commission of the offence.

This witness was also subjected to cross-examination at length and in great detail. So many suggestions were put to her to impeach the credibility of her evidence. However, she successfully withstood the test of cross-examination and nothing substantial has been brought out even during her cross-examination, which would impeach the credibility of her evidence. On the contrary her evidence inspires confidence as it is trustworthy, cogent and reliable.

12. On over all reappraisal of her evidence, according to us, it is consistent with regard to the fact that the Accused had inflicted 4-5 knife blows to her mother. Her evidence gets corroboration from the five injuries found on the dead body of the deceased, which PW-17 Dr. Vinayakrao Vasudevrai Patil has noted in PM report at exh. 60. This witness has also identified the Accused during TI parade. In this connection also, her evidence is consistent. In TI parade 10 persons were made to stand in a row and she has identified the Accused out of them.

13. The prosecution has thereafter examined and relied upon the evidence of PW-14 – Rajendrabhai Dayabhai at exh. 52. He has testified that he was serving as a Guard in the Railways since last 30 years. On 24.7.1995, his duty was in Train No.9031 and 9032. On 24th, they had departed from Gandhidham. He has deposed that the guard's van is the last bogie in the train.

After they left Gandhidham, they had reached Viramgam at 2 O'clock at night. After the train left Viramgam,at about 2.20 hrs., between Jakhvada and Chharoli stations, there was an incident of chain pulling and the train had stopped. As the train slowed down, he had gone to find out the reason why the train had stopped. As soon as the train slowed down, he had seen an individual getting down from the preceding passengers' ladies' compartment. Thereafter, the train had stopped. At that time, they heard a lady screaming for help, saying that her mother had been killed and asking for help. As soon as he reached there, he saw a lady lying in a profusely bleeding condition, and her daughter was screaming. Therefore, his Assistant Jay Prakash had also come there. The lady, who had been injured, was bleeding profusely and she was unconscious. Meanwhile, two police personnel had come and as the lady had got down screaming, he told her that the policemen would accompany her and asked her to be seated in the train again. He wrote a message in the running train and dropped the same at Chharodi Railway station. When the train reached Ahmedabad Railway Station, his duty was over. Thereafter, the police had arrived. This witness has not cross-examined at all by the learned advocate of the Accused. His evidence goes unchallenged. From the evidence of this witness, it is duly established that the deceased died because of the injuries inflicted upon her with the knife in running train.

14. The prosecution has thereafter examined and relied upon the evidence of PW-15 – Gulamhusain Daudbhai at exh. 54. He has inter alia testified that at the relevant time, he was discharging duties as Circle Officer and Executive Magistrate, at Viramgam. He said that he used to be called whenever the police department required to record a dying declaration or conduct a test identification parade. On 29.7.1995, he conducted the test identification parade on the basis of the police report. He had gone to draw a panchnama of the test identification parade on the basis of the police yadi. The said panchnama was drawn at the office of the Mamlatdar. This witness has further deposed that, on 28th, he had been informed in writing by the police, and, therefore, he had fixed the time of 3 O'clock on 29.7.1995 with the police. The panchnama had been drawn in his office. He has further deposed that the police had brought the accused and asked him to sit in the record room. Other nine persons having similar physiques were called and the panchas were also called for drawing the panchnama. The said nine persons were directed to stand in a row, with some of them facing towards the north direction and some of them facing towards the south direction. The accused was called and was asked to stand with the said nine persons. The accused was given permission to change his clothes, if he so desired. The accused stood between the 4th and the 5th person. Thereafter, Hansaben was called

from the Talati's room to the compound opposite the record room and she was asked to identify the Accused. She accordingly went around the said persons and caught the Accused by the hand and brought him out of that row. Upon asking his name, he stated his name as Haiderbhai Aiyubbhai. A detailed panchnama was drawn in respect of the test identification parade and the signatures of both the panchas were obtained. He also signed in their presence. This witness has further deposed that he had brought the panchnama and the police yadi along with him and was producing the same vide exh.55 and exh.56 respectively. He also identified the Accused in the court room as the person identified by Hansaben. During cross-examination he denied the suggestion that he and the investigating officer are friends. However, it is true that he and the investigating officer are Muslims. According to this Court, it is only a coincidence and it is wrong to contend that; as the investigating officer was a Muslim, the Executive Magistrate, who is also a Muslim, would have helped the investigating officer in getting the conviction. If the said analogy is accepted, in that case both of them should have helped the Accused, who is also a Muslim, in getting acquittal. But it is not so. He has unequivocally denied the suggestion that; since he was knowing the investigating officer, he has held a wrong identification parade and the investigating officer has drawn and prepared wrong panchnama of TI parade.

He has also successfully withstood the test of cross-examination and nothing adverse has been brought out from his evidence, which would made his evidence unreliable, untrustworthy or not believable.

15. The prosecution has thereafter examined and relied upon the evidence of PW-12 Dr. Girishbhai Jamnadas Parikh at exh. 42. He has testified that at the relevant time he was a Medical Officer at Mahatma Gandhi Viramgam General Hospital. On 27.7.1995 when he was on duty, the Circle Police Inspector brought the Accused-Haider Aiyubmiya for medical examination, with police yadi. He found injury over his thigh with knife during the course of scuffle. He has issued certificate at exh. 43. On reappraisal of the evidence of this witness, it is duly proved that during scuffle, the Accused has also received injury on his thigh.

16. The prosecution has thereafter examined and relied upon the evidence of PW-18 Maleksab Husainmiyan Tank at exh. 61. He has testified that he was discharging duties as Police Sub Inspector at the Viramgam Railway Police Station since 28.5.1994. On 24.7.1995, he had gone in Train No.9006UP from Viramgam to Vadodara for patrolling. On 25.7.1995, at 6 O'clock in the morning, he had come for patrolling in Train No.5DN. At that time, he came to know that, in the Kutchha Express the Accused had inflicted knife blows and run away, and an offence was registered in that regard. As he had come to

know that the dead body of the deceased was lying in the hospital, he therefore alighted at Ahmedabad Railway Station and inquired about the same. He learnt that the said fact was true. Thereafter, at 6:45 hours, Parasram Namdev, Head Constable of Viramgam police station had come for investigating the offence. He met him and had taken over the investigation of the case. This witness has further deposed that he had learnt that the compartment in which the offence took place, had been kept at the Washing Yard at Ahmedabad Railway Staion. He, therefore, had gone there and found that two police constables were on duty. He asked them to remain on duty. As it appeared necessary to draw the panchnama of the compartment in the presence of the officer of the Forensic Department, he therefore, had taken steps to call them. Thereafter, he went to the Civil Hospital and recorded the statement of Hansaben Kalyanbhai Parmar, daughter of the deceased. Thereafter he held the inquest on the dead body and drew the panchnama (exh.30) in the presence of the panchas. Thereafter, he had recorded the statements of relatives of the deceased and gone to the Ahmedabad Railway Station. On the arrival of the forensic experts, he had drawn the panchnama of the scene of offence in the presence of the panchas, and had also collected the blood samples. He has identified his signature on the panchnama, exh.33. Thereafter, Hansaben had produced the clothes which were worn by the deceased at the time of the incident

and a panchnama was drawn accordingly, vide exh.34. A police constable had produced the blood sample and blouse of the deceased from the Civil Hospital, which was seized under panchnama exh.38. He had also recorded the statements of the persons who were on patrolling in the train and had given instructions to the staff to search the Accused. Thereafter, as per the oral instructions of the superior officer, at Vadodara, he handed over the investigation to A.M.Barad, C.P.I. Thereafter, during the pendency of the investigation, another order was received and he had again taken over the investigation from C.P.I. Mr.Barad. Thereafter, he had seized the ticket purchased by Hansaben for the journey from Dhangadhra to Surat vide panchnama exh.31 and recorded the statements of the remaining witnesses. The Accused had been arrested by Naransinh Mansinh Barad, C.P.I., and as the period of 90 days was about to expire, and the FSL report was yet to be received, the charge sheet (exh.62) was submitted in the Court. Thereafter, the analysis as well as serological reports were received, and the same were produced vide exh.63 and exh.64.

On reappraisal of the evidence of this witness, it is proved that he has held the inquest on the dead body of the deceased, sent the same for autopsy, recorded the statement of the witnesses who are relatives of the deceased, drawn panchnama of the scene of offence, i.e. ladies Compartment, collected blood sample, recovered

the knife as well as clothes of the Accused and thereafter handed over the investigation to Naransinh Mansinh Barad, CPI.

17. The prosecution has thereafter examined and relied upon the evidence of PW-19 – Naransinh Mansinh Barad at exh. 65, who was at the relevant time C.P.I. He took over investigation w.e.f. 25.7.1995 from PSI Maleksab Husainmiya Tank and arrested the Accused on 27.7.1995, carried out discovery panchmama of weapon, sent yadi for arranging TI parade and handed over the investigation to PSI Maleksab Husainmiya Tank w.e.f 31.7.1995. He has testified in the year 1995, when he was discharging his duties as Circle Police Inspector in the Railways, at Mehsana, under orders of the Superintendent of Police, he had taken over the investigation in connection with Viramgam Police Station I Cr.R.No. 46 of 1995 from P.S.I. Tank on 25/7/1995. After taking over the charge of investigation, he had gone to Viramgam. On 26/7/1995, he had recorded statements of witnesses. He had carried on investigation as per the statement given by Hansaben, the eye witness to the incident. On 27/7/1995, Police Inspector Tank had produced the accused and he was arrested in connection with this offence. A Panchnama of his physical condition was drawn and the clothes which were put on by him at the time of the incident, were seized in the presence of the panchas and a panchnama was drawn accordingly. Thereafter, the accused had

been sent for medical treatment. He has further deposed that he had seized the weapon used in the commission of the offence in the presence of panchas by drawing panchnama and recorded statements of witnesses. On 28/7/1995, he had produced the accused in the Court and obtained remand. As it was necessary to hold the test identification parade of the Accused, a yadi was sent to the Executive Magistrate, who asked them to bring the eye witness before him on the next day. On 29/7/1995, Hansaben was produced by PSI Tank before the Executive Magistrate for the purpose of test identification parade and the Accused was also produced before the Executive Magistrate. Upon conclusion of the test identification parade, the accused had been brought back to the police station. He had thereafter recorded the statements of other witnesses and thereafter, on 31/7/1995, he had handed over the charge of further investigation to PSI Tank. He has identified his signature on the panchnama, exh.29. He has also stated that the panchas had put their signatures in his presence. He has further deposed that the panchnama had been written as narrated by the panchas. He has identified his signature on the panchnama, exh.27 and has stated that the panchas had signed in his presence and that, the panchnama had been drawn as narrated by the panchas. He has further deposed that both the panchas had put their signatures in the panchnama, exh.22 [the panchnama whereby the weapon used in the commission of the offence had

been recovered at the instance of the accused], in his presence, and that, the same has been drawn, as narrated by the panchas, and he had made the endorsement that the same had been made before him and signed the same. He has identified the accused as the person whom he had arrested.

18. To prove the case against the Accused, the prosecution has also examined and relied upon the oral evidence of PW-1 Babubhai Harjivanbhai at exh. 21, panch witness of discovery panchnama, PW-2 Bhikhabhai Chhaganbhai at exh. 23, panch witness of discovery panchnama, PW-3 Babubhai Ranchhodbbai at exh. 24, panch witness of seizure of blood sample of the Accused, PW-4 Javerji Kalaji at exh. 26, panch witness of seizure of clothes of the Accused, PW-5 Becharbhai Gagabhai at exh. 28, panch witness of physical condition of the Accused, PW-6 Shaileshbhai Shankarlal at exh. 32, panch witness of the scene of offence and seizure panchnama, PW-7 Natubhai Somabhai Patel at exh. 35, panch witness of physical condition of the Accused, PW-8 Sirajbhai Bachubhai at exh. 36, panch witness of discovery panchnama of seizure of clothes, PW-9 Hareshkumar Himmatlal Vasava at exh. 37, panch witness of sample of blood of deceased.

19. It may be noted that most of the panch witnesses mentioned hereinabove, have not supported the prosecution case and have resiled from the statement made in the panchnama. It is

therefore contended by Mr. Chirag M. Pawar, learned advocate of the Accused that since the panch witnesses have not supported the contents of the panchnama, the same cannot be read in evidence and no reliance can be placed on the said panchnama, and therefore also the prosecution failed to establish the charge against the Accused on the basis of the said panchnama.

20. The plea that the panch withesses have turned hostile, and therefore, the evidence adduced by the investigating officer regarding the panchnama, should be disbelieved, is merely stated to be rejected. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It must be realised that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right of veto to the panchas so far as the question of culpability of the Accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being

pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by Court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimony of investigating officer is not only inspiring confidence, but, gets corroboration from the other evidence on record. From his evidence, contents of all the panchnamas have been duly proved and therefore, reliance can be placed on the said piece of evidence and as per the said piece of evidence the Accused has shown willingness to find out muddamal weapon which he had hidden in the place which was shown by him. Of course, there was no blood stain on the said weapon but the possibility cannot be ruled out that the Accused might have washed and cleaned the weapon and removed the blood stains. However, the blood stain, which was found on his clothes, was having blood group 'A', which is similar to the blood group of the deceased, which is merely a coincidence.

21. The plea that in TI parade, Mamlatdar has not selected dummies falling within the same age group and having similar physique, has also no substance. A perusal of the oral evidence of PW-15 Gulam Husain Daudbhai, who is the Executive Magistrate, at exh. 54 and panchnama of TI parade at exh. 56 shows that there were total 10 persons of similar appearance and the Accused stood between 4 and 5, therefore, all precautions have been taken by the investigating

officer and the Executive Magistrate by selecting dummies falling within the same age group and having similar physique. The Investigating Officer, in his oral testimony, has stated that they have selected dummies falling under the same age group and having similar physique. The said aspect is also mentioned in the panchnama at exh. 55.

22. On overall reappraisal of the evidence of the prosecution witnesses and a threadbare scrutiny of the entire evidence on record, it is duly proved that PW-13 Hansaben Arjanbhai Parmar has witnessed the evidence. In her presence the Accused has inflicted 4 to 5 blows on the deceased. She has also identified the Accused in TI parade. The Accused has also received injury on his thigh during scuffle and the incident was immediately reported to Railway Police and also discovery panchnama of the weapon as well as clothes have been duly proved. The said clothes are stained with blood group 'A', which is similar to the blood group of the deceased. Therefore, according to us, the complicity of the Accused for commission of the murder of Samuben as well as the use of criminal force with the intention of outraging the modesty of the PW-13 Hansaben Arjanbhai Parmar is duly established beyond reasonable doubt.

23. We find ourselves in complete agreement with the aforesaid finding, ultimate conclusion and the resultant order of conviction and sentence, as according to us, no other finding, conclusion or

order is possible except the one reached by the learned trial Court, which is required to be reaffirmed by us.

24. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, and as the Appeal lacks merit, it deserves to be dismissed by confirming the judgment and order passed by the trial Court.

25. For the foregoing reasons, the Appeal fails and accordingly it is dismissed. Resultantly the judgment and order of conviction and sentence dated 1.3.1999 rendered in Special Sessions Case No.124 of 1995 by the learned Special Judge (Atrocity) and Additional Sessions Judge, Ahmedabad Rural, Ahmedabad, is hereby confirmed and maintained.

(A.M.Kapadia,J)

(H.N.Devani,J)

Jayanti*